

**Findings and Recommendations Pursuant to California Government Code  
3505.4 & 3505.5  
PERB Case # LA-IM-201-M**

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In the Matter of an Impasse Between

CITY OF LONG BEACH

And

IAM DISTRICT LODGE 947, LOCAL LODGE 1930

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For the City:

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*Factfinding Panel:*

Neutral Member

David A. Weinberg  
Arbitration Mediation and Conflict Resolution

Union Member

Richard Suarez  
Grand Lodge Representative- West  
IAMAW

City Member

Alejandrina (Alex) Basquez  
Director of Human Resources  
City of Long Beach

## PROCEDURAL BACKGROUND

On April 9, 2016 the Public Employment Relations Board (PERB) notified me<sup>1</sup> that I had been selected by the City of Long Beach and the International Association of Machinists & Aerospace Workers, to serve as the Neutral Chair of the factfinding Panel pursuant to the Meyers-Milias-Brown Act. The Neutral Chair convened a conference call with the parties' advocates on April 8, 2016 to discuss scheduling and other related matters. The Panel held a factfinding hearing on April 15, 2016, in the City of Long Beach. At these hearings the parties presented testimony and evidence to the Panel. Closing briefs were filed with the Neutral Chair on April 29, 2016.

## RELEVANT STATUTORY PROVISIONS

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act<sup>2</sup>. The sections of the amendments that are pertinent to this proceeding are as follows:

3505.4. Unable to effect settlement within 30 days of appointment;  
request for submission to factfinding panel; members; chairperson; powers;  
criteria for findings and recommendations

(a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the

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<sup>1</sup> The letter from PERB was dated April 6, 2016, however the parties to discuss my availability, contacted me prior to that date.

<sup>2</sup> AB646

factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public

agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

## STATEMENT OF ISSUES

Whether the City of Long Beach based on the Meyers- Miliias-Brown Act factfinding criteria, may contract out the work of certain IAM represented positions connected to the City's Civic Center Project?<sup>3</sup>

## BACKGROUND AND RELEVANT FACTS AND FINDINGS

This Factfinding arises as a result of a decision by the City of Long Beach to construct a new Civic Center, which houses the current City Hall and Main Library, amongst other public entities. Prior to the City's decision to rebuild the Civic Center, several seismic studies were conducted starting in 2007. While the original study conducted in 2007 identified the need for seismic retrofit at a cost of 170 million dollars, a later study conducted in 2013 raised the cost to 194 million dollars, and the analysis was that even with the retrofit, the buildings might be unusable and a loss of life could occur.<sup>4</sup> The City used a Facilities Condition Index ("FCI") to help determine whether it is more costly to repair and upgrade a structure than to replace it.<sup>5</sup> The City then decided to rebuild the Civic Center as the best choice to deal with the seismic dangers and authorized a Public-Private procurement model, and ultimately released an RFP on February 28, 2014 for the project.<sup>6</sup> They made this decision based on their analysis that the FCI figures of 0.52 and 0.73 for City Hall and the Library were above the threshold for repair, and argued for replacement and, furthermore that the City did not have the required capital to invest.

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<sup>3</sup> The parties are not in agreement as to whether the factfinding should cover certain supervisory positions that were outlined in the City's Proposition L Study, dated December 22, 2015. Without making a determination as to the legality of the appropriateness of including the supervisory positions in the factfinding, I have included them in my Findings and Recommendations in order to help the parties resolve this issue. As noted in my report I recommend that the City should be allowed to subcontract these positions.

<sup>4</sup> City Exhibit 1A

<sup>5</sup> City Exhibit 1D, describes the FCI index.

<sup>6</sup> City Exhibit 1A, 03

The City determined that the model of Design-Build-Finance-Operate-Maintain (DBFOM) was more advantageous than a Design-Bid-Build (DBB) model, in that the condition of the building would be better insured when it was turned over back to the City in 40 years. On December 9, 2014 the City Council selected Plenary Edgemoor Civic Partners ("PECP") as the company to build operate and maintain the facilities for 40 years before returning them to City control with an FCI of .15, which was later determined to be .20.<sup>7</sup> The O&M portion of the proposed contract with PECP will be subcontracted to Johnson Controls, Inc.<sup>8</sup> The Project Agreement requires that an FCI assessment be done every five (5) years over the 40 year lease to test if the facilities are at .20 or better. The Project Agreement assumes that the PECP will begin operation at some point in 2019, and turn over the facilities in 2059 with an FCI score of .20.<sup>9</sup>

The City in accordance with Section 1806 of the City Charter, also known as Prop. L, conducted a study to determine if the work of the City Employees could be done as efficiently and at a lower estimated cost by subcontracted outside firms. The firm that conducted the study concluded that the subcontracted work would be lower than if the City provided the service.<sup>10</sup> The first Prop L Study was issued on November 22, 2015 and a second Prop L Study was issued on December 22, 2015.

The City entered into an Early Works Agreement as it continued negotiations with the IAM.<sup>11</sup> The parties have met approximately twelve times between December 4, 2015 and February 26, 2016, in order to reach an agreement with respect to the contracting out of the bargaining unit work. The parties exchanged several proposals between December 6, 2015 and February 8, 2016.<sup>12</sup> The parties were unable to reach an agreement and on February 26, 2016 the City declared impasse and gave the Union its LBFO.<sup>13</sup> The Union requested factfinding on March 22, 2016.<sup>14</sup>

## POSITION OF THE PARTIES

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<sup>7</sup> City Exhibit 1A

<sup>8</sup> City Exhibit 1E

<sup>9</sup> City Exhibit 1B

<sup>10</sup> Union Exhibit 6

<sup>11</sup> City Exhibit 1F

<sup>12</sup> The City as noted in their exhibit #4 extended 8 offers; and the Union countered twice

<sup>13</sup> City Exhibit 2b

<sup>14</sup> The City has objected to this factfinding on a number of grounds, including the position that contracting out is not subject to bargaining, but agreed to participate in the factfinding.

The following represents a summary of the parties arguments raised in this factfinding.

#### Position of the City

The City argues that based on the need to provide City services in the event of a seismic event, and the analysis of the current condition of the Civic Center, the City reasonably decided to construct a new facility. The City explored several options and determined that a Public-Private finance model using a DBFOM, approach was most appropriate in order to keep initial costs of the project down and maintain the condition of the building over the 40 years prior to the facilities being turned over to the City.

The City argues that the DBFOM model, which ensures a FCI Warranty at .20, requires the PECP (the project manager selected) to maintain control over the workforce that maintains and secures the building, and therefore necessitates the contracting out of this work. The Union proposals which undermine the control by PECP over the workforce, would compromise the penalties built into the project agreement, should the PECP fail to meet their goals as stated in the 40 year contract. The City argues that PECP can better train and assign staff if they directly control them.

The City argues that the Prop L Study, based on one of the City's local regulations, found that the services could be provided as "efficiently, effectively, and at a estimated lower cost", if provided by PECP. This supports the City's proposal to subcontract out the work at Civic Center.

The City argues that the Union proposal to have JCI manage and direct City employees raises difficult questions of joint employer and disciplinary issues that could impact the FCI warranty.

The City argues that their current proposal to add two security workers does not impact the current workforce, and these personnel would supplement and compliment the work of City security to keep up the quality of the buildings and maintain the required FCI. The Union arguments that the PECP does not care about the security issues since their liability for vandalism is capped at \$10,000, is not reasonable since the vandalism could impact the longer term integrity or quality of the building that the PECP is required to maintain over 40 years at .20 FCI.

The City argues that their LBFO offers greater protection to IAM employees than the status quo, in that the City has offered to ensure that all affected employees would not suffer a reduction in hours, position, duties or compensation as a result of the Project Agreement. These guarantees offered the Union a reasonable deal, which should have been accepted. The Union's arguments about a poor bargaining relationship between the parties should have no impact or relevance to this factfinding, and the Union has refused to broker compromise and aims to stop the entire agreement with PECP.

The City therefore contends that the MMBA supports its proposed decision to subcontract out Building Maintenance, Custodial Services, Facilities Management, and 2.00 additional FTE positions for Security for the Project.

#### Position of the Union

The Union argues that the decision by the City to remove IAM represented employees from the center of the City's civic and municipal life has enormous symbolic importance. The City has failed to demonstrate any persuasive reason why the current city employees cannot continue to provide services to the same facilities, as they currently do, when the buildings and grounds are rebuilt.

The Union argues that the City's sole reason to subcontract out two security positions to guarantee the FCI of the building under the contract is not reasonable. In fact the proposed subcontracted guards are less trained and unarmed and provide less security than the bargaining unit security. In addition the Union argues that the project agreement removes terrorist related damage from the Project Agreement, and therefore the Project Company has no real interest in providing proper security from potential terrorist actions. The City bears all the risk and therefore the City guards should be maintained, who are better trained and armed than the proposed project security.

The Union argues that the City originally proposed to subcontract all five guards at the Civic Center, until the San Bernardino attack forced them to drop their proposal and simply request that two new guards be subcontracted. These two new guards cannot provide the same security for the public and City employees.



The Union argues that the City has placed responsibility for the subcontracting out of the custodians on the wishes of the Project Company, yet it was the City that two years prior wrote the RFP to promote the subcontracting out of the workforce. It was not the Project Company but the City who was promoting this action, and has nothing to do with the Project Company insisting it needed control to maintaining the FCI threshold. Since the City gave a false justification for the contracting out, none should be recommended.

The City's reasons for contracting out the custodial work should not be supported since the basic janitorial work has no impact or bearing on the FCI calculation, as it does not impact the infrastructure of the building that is the basis of the FCI calculation. The Union argues that since IAM represented Maintenance Assistants do not perform work which impacts the FCI the panel should not recommend their subcontracting. The Union argues that even if there is some need for Project Company control over custodial services this could be accomplished by supervision by the Company.

The Union argues that the Building Maintenance work by the bargaining unit employees also do not affect the infrastructure of the Civic Center buildings and grounds and could not impact the FCI. Similar to the custodial services, the Building Maintenance bargaining unit work could be supervised by the Project Company. Therefore the Union believes that there is no need for any subcontracting of bargaining unit work, or in the alternative the IAM's February 7, 2016 counterproposal could be adopted.

## RECOMMENDATIONS

The Neutral Factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. The statute lays out a set of criteria that is to guide the Panel in making their findings. Since this matter concerns one overriding issue (with several parts), as opposed to a set of separate issues under an MOU, not all of the criteria listed in this statute are applicable in this factfinding. Items 5, 6, and 7 listed in the statute which deal with comparability of the

wages hours and working conditions of like jurisdictions and employees, overall compensation and cost of living issues were not argued by the parties nor are relevant to this dispute. Other factors listed in the statute were considered and are relevant to this dispute. Hopefully these recommendations, which are based on the statute will provide an opportunity for the parties to reconsider their positions and reach a negotiated agreement, which is always a preferable option to an imposed agreement.

The Union has raised issues with the basic approach the City took in the Civic Center Project and the need of the City to adopt a DBFOM model of development. The issue presented before this Panel is not to decide whether a different model of development or construction of the Civic Center would be a better option. As the evidence shows there are several different ways to consider civic projects and each have their own benefits and drawbacks. The issue before this Panel is to make recommendations and findings that relate to a decision to subcontract some of the current functions at the new City facilities once it is constructed for approximately 40 years. The City, based on the evidence presented made a reasonable to decision to rebuild the Civic Center. There is no doubt that there is a good chance of another major seismic event apart from any terrorist issues raised in this case that informed the City's decision to build a new facility, as opposed to attempting to retrofit the buildings and grounds.

Since the City determined that based on local statutes and financial concerns that a DBFOM model was a superior way to approach the rebuild, it brought into play a legitimate Union concern regarding the effect on the workers who have long provided the services for the buildings and grounds in Civic Center. The City has raised in these proceedings the central theme that it must be able to insure that the buildings when they are returned to the City in 40 years, must be maintained in good quality so the public asset is protected. They have negotiated an agreement that provides controls and penalties on the Project Manager to help insure that this quality is maintained, and the FCI calculation formula is the main tool of measurement for compliance. All of these concerns and approaches are legitimate and in accordance with some of the statutory factors to be considered in this factfinding. The assertion that in order to protect the FCI rating, that reflects the real condition of the Civic Center, the Project Manager must control certain functions including the work of the employees who service the Civic

Center. When the evidence shows that this is the case, then the City has a persuasive argument regarding the need to subcontract the function to the Project Manager.

However this decision to subcontract the work of represented City employees must not be taken lightly. The Union has a legitimate interest in maintaining ongoing work for its members whom they represent and bargain for. This interest is commonly accepted in the field of labor relations and must be considered in this Panel's determination. To the extent that the City has not provided sufficient evidence of their need for the subcontracting it should not be adopted since it undermines the basic function of employee organizations and destabilizes the work environment and increases labor and workplace conflict, which can impact service to the public. These competing interest and concerns should be balanced. The evidence in this case does show that the City has attempted to deal with some of the concerns of current employees whom might be affected by their proposed subcontracting. They have proposed certain guarantees of no layoffs or reductions in pay for impacted positions, and agreed to not subcontract five SSO positions. These were positive and helpful proposals by the City. However this did not resolve the one central issue for those positions they still feel the need to subcontract, the work that has in the past been performed by bargaining unit members will no longer be available to them once the new Civic Center is built. Those workers will now see work that they have done in the past for the City being performed by new subcontracted workers.

The Neutral Chair of this factfinding panel has attempted to balance these concerns based on the evidence provided and the statutory guidelines. I therefore recommend the following proposal for the issues presented regarding the subcontracted positions.

1) Building Maintenance: These positions should be allowed to be subcontracted as the City has made a persuasive argument that the work performed by the employees are directly related to the long term condition of the City buildings and the Project Manager has a legitimate need to control the work of these employees in order to maintain their condition at the required levels. (The parties have entered evidence that this represents 3.0 FTE positions)

2) Custodial Services: A supervisory position should be allowed to be subcontracted as the City has made a persuasive argument that the Building Services Supervisor may

need to be controlled by the Project Manager staff in order that the custodial work be performed in accordance with the Project Agreement and requirements. However, the remaining staff of Maintenance Assistants has not been shown to directly affect the long-term infrastructure condition of the buildings and grounds and effect the potential FCI rating. The evidence shows that basic custodial staff does not necessarily need to be controlled by the Project Manager, and that the City also has a vested interest in the condition of the building and can equally maintain their condition with their existing staff. There is not a compelling reason to remove these bargaining unit employees from future work, which would undermine the balanced relationship between the City and their represented employees. The Union should however agree to language in the MOU that would allow the Project Manager supervisor the ability to discipline and manage the City unionized employees, which was a legitimate concern of the City if a non City supervisor was managing City staff. (The parties entered evidence that the Supervisor position was 1.00 FTE and there were 7.15 Maintenance Assistant I positions)

3) Facilities Management Administration: These positions should be allowed to be subcontracted as the City has made a persuasive argument that the work performed by the employees are directly related to the long term condition of the City buildings and the Project Manager has a legitimate need to control the work of these employees in order to maintain their condition at the required levels. ( The parties entered evidence that this category of employees represents .82 FTE, which included a Clerk Typist III and a Secretary.)

4) Security: The proposed two additional positions should remain in the bargaining unit as the evidence shows that the work of these Security Officers does not have any impact on the long term condition of the buildings and their current level of service is in fact superior to the proposed contracted out staff. (The parties entered into evidence that this category of employees represents 2.00 FTE)

While these recommendations may require the City to negotiate changes to the Project Agreement, I believe given the size and scope of the project this can be done without extensive cost or delay to the project. In the long term I believe the increased cooperation between the City and its Unions will be worth the investment and represents a balanced approach to this necessary project.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated May 9, 2016 David A. Weinberg

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with recommendations 1,2,3,4 \_\_\_\_\_

I dissent with recommendations 1,2,3,4 \_\_\_\_\_

City of Long Beach Panel Member:

\_\_\_\_\_

I concur with recommendations 1,2,3,4 \_\_\_\_\_

I dissent with recommendations 1,2,3,4 \_\_\_\_\_

Union Panel Member:

\_\_\_\_\_

**City of Long Beach's Concurrence, In Part, and Dissent, In part, to Findings and Recommendations Pursuant to California Government Code 3505.4 & 3505.5  
PERB Case # LA-IM-201-M**

As the City of Long Beach's representative to the fact finding panel, the City respectfully dissents in part and concurs in part to the Fact Finding Report and Recommendations issued by impartial chairperson Daniel Weinberg (Fact Finder). The Report fails to properly weigh the relevant factors required by Cal. Govt. Code section 3505.5, namely the interest and welfare of the public.

I appreciate that the Fact Finder has attempted to craft a recommendation that he believes will improve the long-term cooperation of the parties. That too has been the City's goal. The City's Last Best and Final Offer was such an effort as it addressed the myriad of issues raised by IAM during the bargaining process. Unfortunately, IAM remained intransigent and unwilling to work with the City for a long-term solution. Hence, the parties were at impasse.

I would also like to note that the Fact Finding panel is not addressing the City's objections to the fact finding panel that were filed with PERB prior to the appointment of the Fact Finding panel.

**Partial Concurrence**

First, I concur with the Fact Finder's recommendation that the City of Long Beach ("City") be allowed to subcontract the Building Maintenance positions to Plenary Edgemoor Civic Partners ("PECP"), in connection with the City's Civic Center Project ("Project"). I concur with the Panel's findings, regarding the appreciable impact building maintenance work will have on the Facilities Condition Index ("FCI") warranty contained in the Project Agreement. Further, I concur and so reiterate the Panel's finding that PECP has a legitimate need to control the work of these employees in order to maintain the new Project facilities at an FCI warranty level of 0.20.

Second, I concur with the Fact Finder's recommendation that the City be allowed to subcontract the Facilities Management Administration positions to PECP. Similarly, I concur with the Neutral Panel Member's findings as to the direct effect this work will have on the FCI warranty within the Project Agreement, as well as PECP's legitimate need to control this work in order to meet an FCI warranty of 0.20.

Third, I concur with the Fact Finder's recommendation that the City be allowed to subcontract the supervisory Custodial Services position to PECP. I also concur with the Fact Finder's finding that PECP requires control over this position in order to ensure that custodial work be performed in accordance with the 0.20 FCI warranty level.



## **Partial Dissent**

However, I dissent from the Fact Finder's remaining recommendations, regarding the non-supervisory Custodial Services and Security positions.

### **1. Non-Supervisory Custodial Staff**

I dissent from the Fact Finder's recommendation that the remaining Custodial Services positions should not be subcontracted to PECP, as well as the finding that these positions were not shown to directly affect the long-term infrastructural condition of the Project facilities and so PECP's ability to meet the FCI warranty. I dissent on this point for four reasons.

First, the City illustrated that the FCI warranty constitutes a zero-sum proposition, requiring complete and total control over operations and maintenance ("O&M") services in order to function. Michael Conway specifically highlighted this point while testifying at the hearing. The Neutral Panel Member errs in suggesting that the operative issue revolves around whether a position has any effect on PECP's ability to warrant the Project facilities at a 0.20 FCI level. The FCI warranty does not depend on degrees of effect. Instead, it requires complete control over the direction and execution of O&M services, or it will not work. PECP cannot warrant the condition of facilities for 40 years, if it does not control and direct all O&M services performed on those facilities over those 40 years. The Fact Finder fails to cite to the correspondence from JCI (Exhibit "1.e") that conclusively establishes the need for this control. Thus, it is ultimately irrelevant whether the Fact Finder perceives or estimates the 'effect' any given service could have on the facilities and there was no evidence submitted by IAM to support any contrary conclusion. Hence, the Fact Finder has not properly weighed the public interest in this project. This is especially true where the Fact Finder finds, without any supporting evidence, that contracting out this work would "destabilize" the work environment and increase workplace conflict.

Second, even if the Fact Finder requires evidence of the 'effect' the remaining Custodial Services positions could have on the Project Facilities, the City provided credible evidence of such effects. For instance, the FCI warranty could reasonably be impaired if indirect communication lines exist between PECP's subcontractor Johnson Controls Inc. ("JCI") and custodial staff. Should City employees continue to provide custodial services for the Project facilities, JCI would lose a valuable conduit, warning of potential systems failures observed by 'front-line' custodial services staff — such as ceiling leaks, temporary power disruption, and any other number of issues. A direct line of communication between JCI and custodial staff may be critical to addressing these issues in a timely fashion, before the issue worsens and requires infrastructural repairs. I believe that the Fact Finder erred in discounting both the possibility of this effect, as well as the implications this effect has on PECP's need for total control over custodial services. The testimony from Mr. Suarez before the City Council clearly supports the City's position. (Exhibits "1.h and 1.i")

Third, I dissent from the Fact Finder's recommendation that the parties agree to language in their MOU that permits PECP to discipline and manage the City custodial service employees. This recommendation ignores the core concern identified by the City, and fails to solve joint employer and disciplinary issues. Regardless of the parties' inclusion of language within their



MOU “permitting” a third party to manage and discipline certain City employees over a 40 year period, liability issues would remain and this proposal would create potentially negative precedent for future employer-employee relations. PECP and the City would still face potential liability under joint employer standards. Further, the Fact Finder’s recommended solution does nothing to resolve the clear conflict between the priorities and policies held by the City and those held by PECP. Among many competing priorities between the parties, the FCI warranty presents an important and obvious one. While the City has several aims and goals, which its employees are directed to fulfill, JCI will tailor its O&M services to meet and maintain the warranty for the Project facilities. If a City objective and a JCI warranty-based policy require conflicting tasks be completed, City employees under JCI’s management face a difficult conflict. And, the Fact Finder’s recommendation also would require amendments to the City’s Civil Service system and create unintended consequences for other bargaining unit work. Ultimately, the Fact Finder’s recommendation does not solve the problem that JCI must control the staffing resources in order to fulfill its warranty obligations, compelling me to dissent.

Finally, I dissent from the Fact Finder’s finding as it is based on an erroneous conclusion that subcontracting would undermine the “balanced relationship” between the City and IAM. It is unclear what the “balanced relationship” the Fact Finder is trying to preserve. If the Fact Finder’s conclusion in this regard is that he is concerned about that current custodial staff seeing others performing their prior duties upsets this “balance,” then he should also balance the public interest in the project and the City’s need to provide a safe work environment. Further, there was no evidence presented that the City’s Last, Best, Final Offer would upset this “balance.” The City offered to guarantee the current custodial staff greater protection than it currently enjoys — the guarantee that they will not be laid off for the entirety of their employment with the City. I am also not clear why this “balance” is a consideration under the MMBA, as it is not enumerated as a factor.

In sum, I dissent from the Fact Finder’s recommendations and findings regarding all non-supervisory custodial positions and the recommendation that the parties explore an MOU amendment to allow a JCI supervisor to supervise these staff. Instead, I would recommend that the City be allowed to subcontract these positions to PECP, find that the work performed by these positions has an appreciable effect on the FCI warranty, and conclude that PECP has a reasonable justification for requiring total control over custodial service positions.

## **2. Security Positions**

I also dissent from the Fact Finder’s recommendation that the Security positions should not be subcontracted to PECP, as well as the finding that these positions do not have any impact on the long term condition of the Project facilities. I dissent on this point for several reasons.

First, the Fact Finder mistakenly focuses on whether the services provided by these two additional security positions is superior compared to the current City employees providing security. To that end, the Fact Finder ignores the undisputed evidentiary finding that these City employees will continue to provide security services for the Project facilities, regardless of this Panel’s ultimate decision. If the Panel perceives a need to ensure that competent and sufficient security service is provided for the Project facilities, it may alleviate this concern by recognizing that the current City security service officers (“SSO”) will continue to provide security in the



future. Consequently, the relative competency or level of service expected of the JCI security workers is irrelevant.

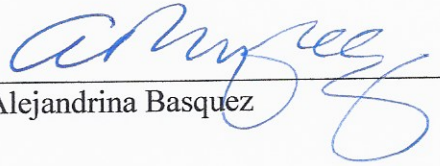
Second, the Fact Finder discounts the potential and reasonable effects SSO work may have on the FCI level of the Project facilities. Once more, the City provided credible and sufficient evidence, demonstrating that security workers can deter and prevent harm from occurring and the City's LBFO also prescribed the limited duties they would be performing. Much as a custodial service worker may prevent severe or irreparable damage from affecting a facility's FCI by assisting JCI diagnose problems, a security officer may prevent damage to a building by deterring individuals from inflicting that damage in the first place.

In sum, I dissent from the Fact Finder's recommendations and findings regarding security positions. Instead, I would recommend that the City be allowed to subcontract these additional positions, find that the work performed by these positions has a discernible effect on the FCI warranty, and therefore conclude that PECP has cause for requiring control over security work.

Respectfully Submitted,

Dated:

5/8/16

  
Alejandrina Basquez

## AND AEROSPACE WORKERS